
HOUSE BILL 1689

State of Washington

58th Legislature

2003 Regular Session

By Representatives Linville, Schoesler, Cooper, Chandler, Holmquist and Hatfield

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1 AN ACT Relating to implementing the federal permit requirements for
2 municipal separate storm sewer system permits; adding new sections to
3 chapter 90.48 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that municipal
6 separate storm sewer system permits are required for certain
7 municipalities under the federal water pollution control act. While
8 these programs provide numerous environmental and public health
9 benefits, they also burden municipalities and their businesses and
10 citizens with many costs and liabilities.

11 The legislature further finds that municipal separate storm sewer
12 systems are distinct from other storm sewer systems such as industrial
13 storm sewer systems and construction site storm water disposal systems
14 because they consist of complex, widely dispersed conveyance networks
15 that drain public roads and other key elements of infrastructure;
16 include numerous inlets and outfalls that can be difficult to locate
17 and maintain; and intermittently and unpredictably receive large
18 volumes of diffuse storm water that may be polluted by a wide variety
19 of substances directly or indirectly produced by various activities of

1 the public at large. The legislature also finds it is exceedingly
2 difficult to predict, sample, identify the source of, and control
3 pollutants that may contribute to the contamination of storm water
4 discharged through municipal separate storm sewer systems.

5 Therefore, the legislature sets forth criteria in this act for
6 development of municipal separate storm sewer system permits under the
7 state's delegated authority to administer the federal municipal storm
8 sewer system permit program and under the applicable waste discharge
9 permit provisions of chapter 90.48 RCW.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.48 RCW
11 to read as follows:

12 The definitions in this section apply throughout sections 2 through
13 4 of this act.

14 (1) "Best management practices" means schedules of activities,
15 prohibitions of practices, maintenance procedures, and other management
16 practices to prevent or reduce the pollution of waters of the United
17 States. Best management practices also includes treatment
18 requirements, operating procedures, and practices to control plant site
19 runoff, spillage or leaks, sludge or waste disposal, or drainage from
20 raw material storage.

21 (2) "Maximum extent practicable" means the technically sound and
22 financially responsible, nonnumeric criteria applicable to all
23 municipal storm water discharges through the implementation of best
24 management practices.

25 (3) "Municipal separate storm sewer" means a conveyance or system
26 of conveyances, including roads with drainage systems, municipal
27 streets, catch basins, curbs, gutters, ditches, man-made channels, or
28 storm drains:

29 (a) Owned or operated by a state, city, town, borough, county,
30 parish, district, association, or other public body created by or
31 pursuant to state law, having jurisdiction over disposal of sewage,
32 industrial wastes, storm water, or other wastes, including special
33 districts under state law such as a sewer district, flood control
34 district, or drainage district, or similar entity, or an Indian tribe
35 or an authorized Indian tribal organization, or a designated and
36 approved management agency under section 208 of the federal clean water
37 act that discharges to waters of the United States;

- 1 (b) Designed or used for collecting or conveying storm water;
2 (c) That is not a combined sewer; and
3 (d) That is not part of a publicly owned treatment works as defined
4 in 40 C.F.R. Sec. 122.2.

5 (4) "Municipality" means a city, town, borough, county, parish,
6 district, association, or other public body created by or pursuant to
7 state law and having jurisdiction over disposal of sewage, industrial
8 wastes, or other wastes, or an Indian tribe or an authorized Indian
9 tribal organization, or a designated and approved management agency
10 under 33 U.S.C. Sec. 1288.

11 (5) "Storm water" means storm water runoff, snowmelt runoff, and
12 surface water runoff and drainage.

13 (6) "Watershed" means a distinct hydrologic drainage area that
14 drains to a watercourse or water body named and noted on common maps,
15 and may be a water resource inventory area established in chapter 173-
16 500 WAC as it existed on January 1, 1997. A watershed may contain
17 multiple basins or subbasins.

18 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.48 RCW
19 to read as follows:

20 (1) In establishing criteria for a municipal separate storm sewer
21 system permit, the department may not require any municipality to
22 engage in programmatic activity or to establish any facilities or
23 systems not required by the federal clean water act.

24 (2) The department shall by rule establish a fee schedule for
25 permits issued under section 4 of this act based upon a municipality's
26 size and ability to pay.

27 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.48 RCW
28 to read as follows:

29 The following terms and conditions govern any permit issued for
30 discharges from municipal separate storm sewer systems.

31 (1) Municipalities that own or operate municipal separate storm
32 sewer systems that discharge under a permit issued under this section
33 shall employ best management practices to the maximum extent
34 practicable and when doing so shall be presumed in compliance with
35 water quality standards.

1 (2) The department shall develop separate permits for eastern and
2 western Washington. Each permit developed for municipal separate storm
3 sewer systems shall recognize the hydrographic and geological diversity
4 of the area covered.

5 (3)(a) The department may not require municipalities to perform or
6 include land use plans or studies as a permit requirement.
7 Municipalities may choose to include land use plans or studies as a
8 best management practice. This section shall not be construed to
9 conflict with 40 C.F.R. Sec. 122.26(d)(2)(iv)(A)(2).

10 (b) The department, working jointly with permitted municipalities
11 and the department of community, trade, and economic development, shall
12 identify strategies that meet both the federal requirements and further
13 infill or urban densification strategies identified in comprehensive
14 plans and development regulations.

15 (4)(a) The department may issue general permits for municipal
16 separate storm sewer systems on a watershed-by-watershed basis. In
17 determining whether to issue a general permit for all municipal
18 separate storm sewer systems in a watershed, the department shall
19 consider the following factors: (i) Physical interconnections between
20 the various municipal separate storm sewer systems; (ii) the location
21 of potentially covered municipal separate storm sewer system discharges
22 relative to discharges from previously permitted municipal separate
23 storm sewer systems; (iii) the quantity and nature of pollutants
24 discharged in such waters of the state as may be located in the
25 watershed; and (iv) the nature of those receiving waters.

26 (b) Where more than one municipality owns or operates a municipal
27 separate storm sewer system within a watershed, including adjacent or
28 interconnected municipal separate storm sewer systems, such
29 municipalities may agree to submit a single municipal separate storm
30 sewer system general permit application for the entire watershed, and
31 the department shall treat such municipalities as coapplicants.

32 (c) This subsection shall not be construed to prevent individual
33 municipalities from applying for separate coverage under a general
34 permit for municipal separate storm sewer systems waste disposal.

35 (d) Each municipality issued a permit within a watershed that has
36 applied for a general permit as a coapplicant is liable and responsible
37 only for the municipal separate storm sewer system within its municipal
38 boundaries.

1 (5)(a) A municipality that owns or operates a municipal separate
2 storm sewer system subject to section 402(p) of the federal clean water
3 act shall submit an application for permit coverage as required by this
4 chapter and the administrative rules adopted under it.

5 (b) Each municipality that applies for or is covered by a municipal
6 separate storm sewer system permit shall maintain complete, up-to-date
7 program documents. No municipality may be required to submit its
8 municipal separate storm sewer system program documents to the
9 department when applying for a municipal separate storm sewer system
10 permit. However, the department may inspect and copy a municipality's
11 municipal separate storm sewer systems program documents upon
12 reasonable notice.

13 (c) Each municipality that receives coverage under a municipal
14 separate storm sewer system permit issued under this section shall
15 submit performance reports as required by rule.

16 (6) The department may not require a municipality that has a
17 municipal separate storm sewer system discharge permit to obtain for
18 that storm water discharge a state waste discharge permit under this
19 chapter.

20 (7) The provisions of chapter 34.05 RCW, the administrative
21 procedure act, apply to all rule making necessary to implement this
22 section and section 3 of this act and adjudicative proceedings
23 authorized by or arising under this section.

24 (8) To the extent that anything in RCW 90.48.160 through 90.48.200
25 and 90.48.465 conflicts with this section, this section shall control
26 as to municipal separate storm sewer systems.

27 (9) Nothing in this section is intended, nor shall any portion of
28 this section be construed, to create any new or additional rights in
29 any person.

30 (10)(a) This section shall not be construed as creating a new cause
31 of action against the state or any municipality.

32 (b) Notwithstanding RCW 4.92.090, 4.96.010, and 64.40.020, no state
33 law claim for damages may be filed against the state or any
34 municipality for performing responsibilities under this section.

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